

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THOMAS KLEIN,	:	Case No. 1:06-cv-164
	:	
Petitioner,	:	District Judge Susan J. Dlott
	:	
v.	:	Magistrate Judge Timothy Black
	:	
SIMON LEIS, JR.,	:	SUPPLEMENTAL ORDER DENYING
	:	PETITIONER'S MOTION FOR
Respondent.	:	CERTIFICATE OF APPEALABILITY;
	:	FOR LEAVE TO PROCEED <i>IN</i>
	:	<i>FORMA PAUPERIS</i> ON APPEAL;
	:	AND FOR STAY OF TRIAL
	:	

This matter is before the Court on *pro se* Petitioner Thomas Klein's Motion to Correct a Fundamental Unfairness/Manifest Injustice; Notification of Appeal of Clearly Erroneous Ruling; Application for Certificate of Appealability and Leave to Proceed in Forma Pauperis. (Doc. #28.) Petitioner requests "that a Certificate of Appealability issue" on the double jeopardy claim presented in his petition for writ of habeas corpus (doc. #3); that he be "permitted to proceed in Forma Pauperis" on appeal; and that his pending state criminal trial be "stayed" to permit proper consideration of the issues presented in his Motion. (See id. at 5-6.)

On May 30, 2006, this Court entered an Order adopting the Magistrate Judge's Report and Recommendation ("R&R") and denying Klein's habeas petition to vacate his state criminal trial, then scheduled to begin June 5, 2006. (See doc. #23.) The Court's Order did not explicitly discuss whether Klein would be entitled to obtain a certificate of appealability on his claim and/or proceed *in forma pauperis* for purposes of appeal. The Magistrate Judge, however, addressed both issues in his R&R and recommended as follows:

1. A certificate of appealability should not issue with respect to the claim alleged in the petition because the petitioner has failed to make a substantial

showing of the denial of a constitutional right based on the claim. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

2. The Court should certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation would not be taken in “good faith” and, therefore, DENY petitioner leave to proceed on appeal in forma pauperis upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

(Doc. #20 at 24-25 (paragraph numbering changed).)

Upon further review, the Court sees no reason to depart from the Magistrate Judge’s analysis and conclusions as either of these issues. The Court therefore **REAFFIRMS** its Order adopting the Magistrate Judge’s R&R (doc. #23) and accordingly **DENIES** Petitioner’s requests for a certificate of appealability and for leave to proceed *in forma pauperis* on appeal. In light of these rulings and the passage of Petitioner’s retrial date, the Court also **DENIES AS MOOT** Petitioner’s request for a stay of his retrial.

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge